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Missing persons

Report of the Secretary-General

Summary

In its resolution 67/177 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 67/177 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report has been prepared in accordance with that resolution and follows the previous report of the Secretary-General on missing persons (A/67/267).

2. The report outlines measures relating to (a) the prevention of persons from going missing; (b) mechanisms to clarify the fate and whereabouts of missing persons; (c) children; (d) the criminal investigation and prosecution of cases of missing persons; (e) forensic recovery and identification of remains of missing persons; and (f) the legal status of missing persons and support for their families. It ends with a number of conclusions and recommendations. The report has benefited from the contributions received from Member States, intergovernmental organizations and non-governmental organizations in response to a note verbale dated 28 March 2014 addressed to them by the Office of the United Nations High Commissioner for Human Rights (OHCHR).[1]

3. In resolution 67/177, the General Assembly focuses primarily on the specific issue of missing persons in connection with international or non-international armed conflicts. However, persons can also go missing in other contexts, including in situations of violence, insecurity, organized crime, natural disaster or migration. Initiatives taken to address the issue of persons who are unaccounted for are not necessarily defined by the cause or context of their disappearance. Therefore, the present report also reflects information received from States, intergovernmental and other organizations regarding measures to address the issue of persons who are unaccounted for in contexts other than armed conflict, to the extent that they can be relevant for this latter category.

II. International legal framework

4. In his previous report on missing persons, the Secretary-General sets out the international legal framework applicable to the issue of missing persons, referring to international human rights law and international humanitarian law (see A/67/267, paras. 4-7). That report also lays out how the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. In his annual report to the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, further articulated the right to the truth. He noted that, in the aftermath of repression or conflict, that right should be understood "to require States

[1] Contributions were received from Algeria, Croatia, Ecuador, Egypt, Kuwait, Paraguay, Switzerland, Tunisia, the International Committee of the Red Cross, the International Commission on Missing Persons, the United Nations Office on Drugs and Crime (UNODC), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the World Food Programme (WFP). UNODC and WFP stated that they had no relevant information to contribute. The submission of UNRWA focused on missing humanitarian and United Nations workers, in particular in the Syrian Arab Republic. The issue of missing humanitarian and United Nations personnel is covered in the report of the Secretary-General on safety and security of humanitarian personnel and United Nations personnel (A/68/489).

to establish institutions, mechanisms and procedures that are enabled to lead to the revelation of the truth, which is seen as a process to seek information and facts about what has actually taken place, to contribute to the fight against impunity, to the reinstatement of the rule of law, and ultimately to reconciliation" (see A/HRC/24/42, para. 20).

5. The international legal framework also includes the International Convention for the Protection of All Persons from Enforced Disappearance. As at 1 July 2014, there were 42 States parties to the Convention. Since the previous report of the Secretary-General, eight States have acceded to or ratified the Convention. The Secretary-General has reported on an annual basis to the General Assembly on the status of the Convention (see A/67/271 and A/68/210). Those reports provide an overview of the activities of the Convention's monitoring mechanism, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances, as well as the activities of the Secretary-General, OHCHR, United Nations agencies and organizations and intergovernmental and non-governmental organizations in relation to enforced disappearances.

6. In October 2013, the International Commission on Missing Persons organized a conference entitled "The missing: an agenda for the future". In the conference report,[2] the Commission recommends that the international community recognize the global scale of the problem of missing persons and that an international mechanism and standing capacity to deal with the missing be established to address persons missing from conflict, human rights violations, organized violence, migration or any other causes. It also proposes an international declaration on the role of States in addressing the issue of persons missing as a consequence of armed conflict and human rights violations.

III. Measures to prevent persons from going missing

7. In resolution 67/177, the General Assembly stresses the importance of measures to prevent persons from going missing in connection with armed conflict, which may include enacting national legislation, producing and providing proper means of identification, establishing information bureaux, grave registration services and registers of deaths, and ensuring accountability in cases of missing persons. As noted in the previous report of the Secretary-General, preventive measures should ideally be adopted in peacetime to ensure they are in place before they may be required (see A/67/267, para. 8).

A. Enacting national legislation

8. It is critical that in dealing with the issue of missing persons, States develop a national legal framework that incorporates their obligations under international humanitarian law and international human rights law. This is important both from a preventive and a reactive perspective as it can help to ascertain the fate of missing persons, ensure the comprehensive collection and proper management of information and realize the right to the truth of victims' families and provide them with necessary support.

[2] Available from http://www.ic-mp.org/wp-content/uploads/2014/07/conferencereporteng.pdf.

9. The International Committee of the Red Cross (ICRC) reported that it has continued to work with a number of States on draft legislation on issues relating to the missing persons, including in Armenia, Bolivia (Plurinational State of), Guatemala, Lebanon and Peru. It has also continued to conduct and support studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. In addition to those countries listed in the previous report (see A/67/267, para. 11), such studies have been carried out or are ongoing in Armenia, Azerbaijan, Georgia, Côte d'Ivoire and the Republic of Moldova. Moreover, following the thirty-first International Conference of the Red Cross and Red Crescent, held in 2011, 31 States have officially pledged to implement measures aiming at guaranteeing and protecting the rights of missing persons and their families. Those States are Argentina, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland.

10. At the regional level, the General Assembly of the Organization of American States (OAS) has adopted on a yearly basis since 2005 a resolution on persons who have disappeared and assistance to members of their families. The 2013 resolution, inter alia, encourages OAS member States to adopt the necessary domestic legal framework to recognize and address the legal and practical difficulty and hardship faced by the missing person and his or her family members, including the legal framework needed to authorize a "declaration of absence" for persons who are presumed to have disappeared. The resolution also invites OAS member States to enact timely provisions that ensure the participation and representation of victims and their families in relevant proceedings, as well as access to justice and to mechanisms for them to be able to seek fair, prompt and effective reparation, as well as provisions that guarantee protection for victims and witnesses. Following that invitation in January 2014, Argentina, Colombia, Chile, Peru and Uruguay have submitted detailed reports describing the measures they have taken to implement the resolution.[3]

11. In Mexico, a law was passed in April 2012 to establish and regulate a national registry for information on missing or disappeared persons. The registry is to collect and organize information in an electronic database regarding missing and disappeared persons. The law will become fully operational once its regulation is published. In February 2013, a general law on victims came into force in Mexico (amended in May 2013), which aims to recognize and guarantee the rights of victims of crime and human rights violations, particularly with regard to assistance, protection, care, truth, justice and reparation. In its submission, Ecuador noted that its Judiciary Council issued a standard operating procedure on the search for, investigation into and location of disappeared, lost or missing persons, which explains the procedures that need to be followed by the Ecuadorian National Police, the Office of the Prosecutor, judges and others for the immediate handling of cases involving disappeared, lost or missing persons.

[3] Available from www.oas.org/consejo/cajp/human%20rights.asp#Persons Who Have Disappeared.

B. Other preventive measures

12. In time of armed conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. For example, the defence forces of Kenya and the United Republic of Tanzania issue identification discs to all officers going on military operations. Their officers also carry their military identification cards. In Bangladesh, each member of the Defence Force has two identification metal discs, and all personnel going on peacekeeping missions are required to provide a blood sample before deployment. In the United States of America and in Canada, the armed forces use extensive means to ensure the identification of their personnel, including identification discs, fingerprints kept in a databank, blood samples of all personnel in a DNA databank, identification cards and dental records.

13. International humanitarian law requires the establishment of national information bureaux and grave registration services. Examples of national information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom. In its submission, Croatia noted that its authorities have ensured the possibility of joint searches and marking of possible graves, exhumation, and identification of the remains of persons from Serbia and Bosnia and Herzegovina killed in Croatia.

IV. Measures to clarify the fate and whereabouts of missing persons

14. In resolution 67/177, the General Assembly reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts, and called upon all States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing. To the greatest extent possible, States should provide the family members of missing persons with all relevant information, including the person's whereabouts or, if they are dead, the circumstances and causes of their deaths. In addition to the ratification and implementation of relevant international and regional legal instruments, such measures include tracing activities, coordination mechanisms, national institutions, truth-seeking mechanisms and archives.

A. Tracing and restoration of family links

15. ICRC continued to conduct extensive tracing activities, including the collection of information about persons unaccounted for and the circumstances under which they disappeared. The work involves maintaining a constant dialogue and making confidential representations to the relevant authorities or armed groups to determine the whereabouts of missing persons, provided that families of missing persons have requested and/or agreed to the intervention of ICRC on their behalf.

16. ICRC and national Red Cross and Red Crescent societies assist with the maintenance and restoration of links between family members during conflict. That work involves tracing relatives, exchanging family messages, reuniting families and

seeking to clarify the fate of those who remain missing. ICRC has expanded the scope of its work in relation to the restoration of family links to persons separated as a consequence of migration, in recognition of their particular vulnerability in that regard. Other organizations also continue to be involved in the tracing and restoration of family links activities, including the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. Agencies such as the United Nations Children's Fund and non-governmental organizations continue to cooperate with the International Red Cross and Red Crescent Movement in, for example, assisting unaccompanied children.

B. Coordination mechanisms

17. Former parties to a conflict may agree to take specific measures under the auspices of a neutral actor. Such measures include setting up coordination mechanisms to exchange information; providing mutual assistance in locating and identifying missing persons and in the recovery, identification and return of human remains; and keeping family members informed about progress in determining the fate and whereabouts of missing persons.

18. The Committee on Missing Persons in Cyprus, which is composed of a Greek Cypriot member, a Turkish Cypriot member and a member from the United Nations, continued its forensic recovery and identification activities, with advice from ICRC and technical assistance from the Argentine Forensic Anthropology Team, a non-governmental organization. By the end of June 2014, the Committee had investigated 887 burial sites across the island and exhumed the remains of 1,092 missing persons. Of those exhumed, 521 had been identified and returned to their families.

19. In Kosovo,[4] the Working Group on Missing Persons, chaired by ICRC and bringing together representatives of the authorities in Belgrade and Pristina, continued its complex work to account for missing persons. According to information received from ICRC, out of the 4,315 cases that had been closed as at April 2014, persons were located alive in 1,372 cases. It is estimated that the number of persons still unaccounted for stands at 1,712.

20. The tripartite coordination mechanism set up by the authorities of Georgia and the Russian Federation, and the de facto authorities in South Ossetia, to exchange information and clarify the fate of persons unaccounted for during and after the August 2008 hostilities, met eight times between February 2010 and November 2013. A similar mechanism in relation to the 1992-1993 Georgia-Abkhazia conflict, established at the end of 2010, met for the fourth time in December 2013, while its forensic working group has met six times. The dialogue led to the exhumation of 64 sets of human remains in 2013. In 2014, exhumations were planned in three additional sites, reportedly containing over 60 sets of human remains. As the identification process progresses, families have started to receive answers regarding the fate of their missing relatives.

21. The Independent Commission for the Location of Victims' Remains, established in 1999 by an intergovernmental agreement between the Republic of

[4] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

Ireland and the United Kingdom, has a mandate to obtain information that may lead to the location of the remains of those killed and buried in secret by illegal organizations prior to 10 April 1998, as a result of the conflict in Northern Ireland. As at June 2014, nine bodies had been recovered (out of 16 persons who disappeared).

22. In the Middle East, the ICRC-chaired Tripartite Commission, which was established in 1991 to resolve the fate of missing persons in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. So far, the Commission has resolved 316 cases of missing persons and 149 human remains have been repatriated from Kuwait to Iraq. Excavations have continued to take place in Iraq in order to locate the remains of Kuwaiti missing persons. At its thirty-eighth session, held in January 2014, the Tripartite Commission decided to further strengthen the process of localizing possible burial sites. Concrete steps were also taken by the authorities of both Iran (Islamic Republic of) and Iraq to implement the joint memorandum of understanding signed by both Governments in 2008 in relation to the 1980-1988 war between the two countries. Between January 2011 and March 2014, the remains of 916 Iranian and Iraqi soldiers who had gone missing during the war were recovered in Al-Faw Peninsula. As at April 2014, 275 sets of human remains had been repatriated from Iran (Islamic Republic of) to Iraq, and 641 from Iraq to Iran (Islamic Republic of). The national authorities of Iran (Islamic Republic of) and Iraq have reaffirmed their commitment to carry out more missions of similar nature in the future.

C. National institutions

23. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons without discrimination and providing support to the families of the missing. Such mechanisms exist, inter alia, in Argentina, Armenia, Azerbaijan, Bosnia and Herzegovina, Colombia, Chile, Croatia, El Salvador, Georgia, Iran (Islamic Republic of), Iraq, Kosovo,[5] Libya, Panama and Serbia. Work is under way in Lebanon to establish such a mechanism.

24. In Bosnia and Herzegovina, the Missing Persons Institute was established in 2005, on the basis of an agreement between the Government and the International Commission on Missing Persons. The Institute is to address all aspects related to the issue of missing persons resulting from the conflict in the former Yugoslavia. It ensures that mass grave sites are protected, catalogued and properly excavated and that relatives of the missing are able to participate in the search process. It is also to keep a unified central record of those who went missing during the conflict. Through international assistance, over 19,496 persons had been identified in the western Balkans by March 2014, of which over 14,000 related to Bosnia and Herzegovina. By 2014, Bosnia and Herzegovina had accounted for two thirds of those missing in connection with the armed conflict, while 7,526 persons are still unaccounted for. In its submission, the International Commission on Missing Persons reported that, in Bosnia and Herzegovina, 74 per cent of those who went

[5] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

missing had been accounted for by April 2014 (over 70 per cent in the wider region of the former Yugoslavia).

25. Croatia reported in its response that the Commission for Detained and Missing Persons acts as an expert, interdepartmental and advisory body, and the Bureau for Detainees and Missing Persons of the Ministry of Veterans' Affairs performs expert and administrative work regarding the search for missing persons. Through the work of these bodies, and in cooperation with international organizations, most cases of missing persons stemming from the war in the 1990s have been solved. As at 9 April 2014, there were 1,656 missing persons unaccounted for. Most missing persons had been found in mass and individual graves. The remains of 4,937 persons had been exhumed, of which 3,960 persons had been identified. Also, in April 2012, Croatia published a third edition of the "Book of missing persons on the territory of the Republic of Croatia" in cooperation with ICRC and the Croatian Red Cross. The book is used as a tool in the tracing process and as a trigger for the wider public to provide any additional information it might possess that could contribute to elucidating the fate of missing persons and locating their whereabouts.

26. In Colombia, three mechanisms are in charge of coordinating efforts to provide answers to the families of missing persons regarding the fate and whereabouts of their relatives, as well as to provide reparation. The National Commission for the Search of Disappeared Persons is mandated to support and promote investigations into cases of enforced disappearances and coordinate the design and implementation of the national registry of missing persons, the national plan on the search for missing persons and the urgent search mechanism. Victims of enforced disappearance can obtain reparations through the National Unit for Comprehensive Attention and Reparation to the Victims. The National Centre of Historical Memory collects and recovers all documents, oral testimony and other evidence related to violations established in the Victims' Rights and Land Restitution Law. In 2014, the Centre launched its report on enforced disappearances in Colombia.[6] Since 2007, the inter-institutional roundtable on support of victims of enforced disappearances, chaired by OHCHR in Colombia and ICRC, and composed of a number of State agencies, victims, human rights and forensic organizations, have continued to contribute to collective efforts aimed at providing answers to the families of missing persons at the national level. This initiative has been replicated at the regional and local levels.

27. In Libya, the Ministry for the Affairs of Families of Martyrs and Missing Persons was designated in 2011 as the governmental authority in charge of clarifying the fate and whereabouts of missing persons. Its mandate, structure, objectives and working modalities have been partially defined in different laws, for example, Council of Ministers resolution No. 85 of 2012 on caring for and honouring the families of martyrs and missing persons, General National Congress Law 1 (2014) on the care of martyrs and missing persons of the 17 February revolution, and General National Congress Law 31 (2013) on the martyrs of the Abu Salim prison massacre.

28. In Mexico, the Ministry of the Interior signed an agreement with ICRC in February 2013 in order to facilitate the search for missing persons, including the

[6] Available from www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo1.html.

establishment of a protocol for the identification of human remains, a national registry of unidentified remains and the formulation of a holistic response by authorities to families' needs. As part of the agreement, a working group on missing persons was created in June 2013. The main objective of the working group is to elaborate measures aiming to prevent disappearances, improve the search mechanisms for missing persons and implement an efficient and effective information management system at the national level that also takes into consideration the regional dimension of the issue. Four subworking groups were created to tackle specific issues, including forensics, information management systems, legal issues and accompaniment and provision of information to families.

29. In Panama, a special national commission aimed at addressing the issues of relatives of missing and murdered persons during the military regime was created in 2011.

30. In Peru, the Ministry of Justice and Human Rights has been engaged in efforts to draft a law on the creation of a general directorate for the search of missing persons, with the capacity to record and centralize information on missing persons and to accompany families and provide them with appropriate assistance. In parallel, the Inter-institutional Platform for the Search of Missing Persons drafted a protocol related to inter-institutional coordination and good practices for the search of missing persons, which has been presented to the Ministry of Justice and Human Rights for consideration and validation.

31. In its submission, Paraguay reported that a national team for the investigation, search and identification of detained, disappeared and executed persons between 1954 and 1989 was created by Presidential Decree 7101/11 of 2011, as amended in 2013. The team is charged with organizing and coordinating a national system for the search and identification of missing persons, as well as compiling and updating information in the register of victims of the past dictatorship. Since its creation, the team has performed several excavations. In 2013, it exhumed 17 sets of remains, of which three have been identified using DNA profiling.

32. Egypt stated in its response that its Ministry of the Interior has established a mechanism to receive inquiries about missing persons in Egypt.

33. Finally, during the ordinary meeting of the Council of Central American and Caribbean Attorneys General and the first meeting of Forensic Service Directors of Central America and Mexico, both held in April 2013, a joint declaration was signed to strengthen coordination mechanisms for the search of missing persons and promote the adoption of protocols for joint action.

D. Truth-seeking mechanisms

34. National and international truth-seeking mechanisms constitute other valuable instruments to address the issue of missing persons or persons who are victim of enforced disappearance, including in the context of transitional justice processes. In his report to the twenty-fourth session of the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence called for renewed attention to the victim-tracing function of truth commissions, recalling the significant contribution of earlier truth commissions to this task, and recent advances in forensics (see A/HRC/24/42, para. 102).

35. Tunisia reported in its submission that, in December 2013, it had adopted Organic Law 2013-53 of 24 December 2013, on establishing and organizing transitional justice. In addition to other transitional justice mechanisms, the Law created the Truth and Dignity Commission, formally launched on 9 June 2014. The Commission is mandated to investigate gross human rights violations, including enforced disappearances, that were committed by the State or those who acted in its name and under its protection.

36. In the Plurinational State of Bolivia, the Ministry of Justice, the Office of the Prosecutor and the Universidad Mayor de San Andrés signed an agreement in February 2014 to investigate cases of enforced disappearances that took place between 1964 and 1982.

37. In April 2014, the Parliament of Nepal passed the Act on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) to create two commissions: the Truth and Reconciliation Commission and the Commission on Investigation of Disappeared Persons, which are tasked to inquire into the killing of thousands of people during the 1996-2006 conflict and the fate of 1,300 persons who are still missing, among other violations.[7]

38. International commissions of inquiry and fact-finding missions have made recommendations to relevant authorities regarding missing or forcibly disappeared persons. For example, in its final report, the commission of inquiry on human rights in the Democratic People's Republic of Korea recommended that the country "clarify with full detail the fate of any disappeared persons who cannot be readily traced" and "provide the families and nations of origin of all persons who have been abducted, or otherwise forcibly disappeared, with full information on their fate and whereabouts, if they have survived; allow those who remain alive, and their descendants, to return immediately to their countries of origin; and, in close cooperation with their families and nations of origin, identify and repatriate the physical remains of those who have died" (see A/HRC/25/63, para. 89). The Independent International Commission of Inquiry on the Syrian Arab Republic recalled that parties to a conflict must take all feasible measures to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information they have on their fate (see A/HRC/21/50, annex II, para. 49). Annex IV of the report submitted to the Human Rights Council at its twenty-fifth session also deals specifically with enforced disappearances in Syria (A/HRC/25/65, annex IV).

E. Archives

39. The collection, protection and management of relevant information are essential components for addressing the issue of missing persons. In resolution 67/177, the General Assembly invited States, national institutions and, as

[7] The Office of the United Nations High Commissioner for Human Rights (OHCHR) has raised several concerns with the Act, including that it gives the Commissions the power to recommend amnesties for gross human rights violations or serious violations of international humanitarian law. See OHCHR technical note, available from www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf. See also the joint Special Procedures statement, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14824&LangID=E.

appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with applicable laws and regulations.

40. In its resolution 21/7 on the right to the truth, the Human Rights Council requested OHCHR to invite Member States, United Nations organs, intergovernmental organizations, national human rights institutions and non-governmental organizations to provide information on good practices in the establishment, preservation and provision of access to national archives on human rights, and to make the received information publicly available in an online database. In response to an invitation by OHCHR in April 2013, submissions were received from Argentina, Burkina Faso, Burundi, Germany, Guatemala, Latvia, Lithuania, Mexico, Norway, Paraguay, Poland, the Russian Federation, Serbia, Spain and Ukraine, as well as from the International Commission on Missing Persons, ICRC and the Timor-Leste Post-Commission for Reception, Truth and Reconciliation Technical Secretariat. These contributions were made available on the OHCHR website.[8] OHCHR is also finalizing a rule-of-law tool for post-conflict States on archives.

41. In his report to the twenty-fourth session of the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence explained how archives, both those of truth commissions and general national archives, contribute to the realization of the right to the truth. He encouraged, inter alia, truth commissions to adopt in their recommendations policies that maximize access to archives consistent with considerations of privacy and personal safety. He called on States to opt for archiving modalities that maximize access to all stakeholders, in compliance with the rights to privacy and personal security (see A/HRC/24/42, paras. 80-88 and 106). The Special Rapporteur, together with ICRC and Swisspeace, is also planning an expert workshop on archives, to take place in Geneva in September 2014.

42. Croatia reported in its submission that the records of its Directorate for Detainees and Missing Persons, documentation of exhumations and identification of remains are to be stored permanently. While persons outside the Directorate have no access to the archives, they may obtain copies of documents through a reasoned request.

43. In Chile, in February 2014, ICRC, the National Medical Legal Service and two associations representing families of missing persons signed an agreement for ICRC to preserve back-up biological reference samples from families of missing persons for DNA analysis for a (renewable) period of at least 30 years.

[8] http://www.ohchr.org/en/issues/truth/pages/truthIndex.aspx.

V. Children

44. In resolution 67/177, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. In its General Comment on children and enforced disappearances, published in 2013, the Working Group on Enforced or Involuntary Disappearances recalled, inter alia, that "States must establish appropriate measures to prevent enforced disappearance of children or their parents in times of armed conflict and take appropriate steps to aid parents in searching for children disappeared during armed conflict or children searching for their parents disappeared during armed conflict" (A/HRC/WGEID/98/1, para. 5).

45. In El Salvador, the National Commission for the Search of Missing Children during the Internal Armed Conflict continued its work to clarify the fate of children whose whereabouts are still unknown.

46. In its submission, Croatia informed that it gives special attention to the search for children who were registered as missing. Croatia reported that most of these cases had been solved and that 10 cases of persons that were children at the time when they went missing remain unresolved.

VI. Criminal investigation and prosecution

47. Cases of missing persons may involve conduct that amounts to criminal offences, while the commission of enforced disappearance is always a crime. Depending on the circumstances, such conduct may also amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties. In order to enable effective investigations and prosecutions, violations of relevant standards of international humanitarian and international human rights law should be criminalized under national criminal law, and necessary investigative and judicial mechanisms should be established.

VII. Forensic recovery and identification of remains of missing persons

48. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of their bodies or remains are essential. New methodologies and scientific advances are important in this regard. Forensic science can make a significant contribution to human rights and humanitarian work. In resolution 67/177, the General Assembly recognized that great technological progress has been made in the effective search for, and identification of, missing persons using forensic sciences, including DNA forensic analysis. It invites States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices regarding the prevention and resolution of cases of missing persons in connection with armed conflict.

49. It is of the utmost importance that forensic investigations into the missing are up to international standards, so as to not compromise the results or the credibility of forensic institutions and practitioners involved, or further traumatize families. Updating equipment, providing training and ensuring quality control and assurance to meet the complex nature of these investigations, as well as cooperating with specialized international organizations, are crucial for improving results, maintaining credibility of the concerned institutions and addressing the needs of bereaved families.

50. In its resolution 15/5 on forensic genetics and human rights, the Human Rights Council encouraged States to consider the use of forensic genetics to contribute to the identification of the remains of victims of serious violations of human rights and of international humanitarian law, to address the issue of impunity, and to contribute to the restoration of identity of those persons who were separated from their families, including in the context of armed conflicts and violations of international humanitarian law. The Council, however, also encouraged States to use forensic genetics in conformity with international standards accepted by the scientific community in relation to quality assurance and control, and to ensure, where appropriate, the utmost respect for the principles of protection and confidentiality of information (A/HRC/RES/15/5).

51. Standards related to forensic sciences and human remains in the context of investigations of the missing have been developed by the United Nations, the Council of Europe, the International Criminal Police Organization (INTERPOL), ICRC and competent professional and scientific organizations, such as the European Network of Forensic Science Institutes. Recommendations were also made at the 2003 International Conference of Governmental and Non-Governmental Experts on the Missing and their Families, and at the 2010 Second World Congress on Psychological Work in Exhumation Processes, Forced Disappearance, Justice and Truth. The World Medical Association, in its updated Statement on Forensic Investigations into the Missing, adopted at its sixty-fourth General Assembly, held in Brazil in 2013, called upon national medical associations to help ensure compliance by forensic medical practitioners with the principles enshrined in international humanitarian law for the dignified and proper management, documentation and identification of the dead, and where possible, providing answers to the bereaved. It also called upon all national medical associations to help ensure that, when its members take part in forensic investigations for humanitarian and human rights purposes, such investigations conform to the principles and practices of humanitarian forensic action developed by ICRC.

52. ICRC continues to observe a growing number of forensic institutions and practitioners following the standards and recommendations on forensic best practices as they apply to preventing and resolving cases of missing persons. Several countries have acquired highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis (including in Argentina, Australia, Brazil, Chile, Colombia, Croatia, Cyprus, Georgia, Guatemala, Iran (Islamic Republic of), Iraq, Mexico, Peru, Portugal, Spain, United Kingdom of Great Britain and Northern Ireland, and the United States of America). ICRC has also been assisting and helping to build local

forensic capacity.[9] Such assistance ranges from technical support and advice and tailored training, to the provision of equipment and tools (including databases for the management of information on the missing) and the promotion of communication, coordination and cooperation among forensic services for improved prevention and investigation of the missing from armed conflicts.

53. Between 2005 and 2008, ICRC developed a forensic information management tool, the Ante-Mortem/Post-Mortem Database. The Database manages information about missing persons, as well as the events related to their disappearances, unidentified remains and the sites where they were found. In Mexico, the Attorney-General's office signed an agreement with ICRC in September 2013 for the donation of the Database. Training courses on the collection of data and the use of the Database started in 2014. In October 2013, a new protocol on the treatment and identification of human remains was also distributed at the federal and state levels in Mexico. The Database has also been shared with partners in El Salvador and Guatemala, who have benefited from training programmes, or will do so. More generally, ICRC has provided various training courses to forensic experts in El Salvador, Guatemala, Honduras and Mexico, on the handling of human remains and the interaction with missing persons' family.

54. In Colombia, the implementation continued of a large-scale project to compare fingerprints from data held in the National Civil Registry with autopsy reports on unidentified bodies. Over 10,500 matches have been made through this project, thus enabling the death of these persons to be confirmed and their bodies to be located and returned to families.

55. In Peru, the Medical Legal Institute is designing an optimization plan for the following years aimed at increasing its efficiency in relation to the search of missing persons. The Ministry of Justice and Human Rights allocated funds to the Attorney-General's office for the purchase of items required for DNA profiling and identification of human remains.

56. In Guatemala, the National Reparations Programme has started collecting information about possible gravesites in relation to the past conflict. With ICRC support, non-governmental organization have helped families reunite and hold proper burials for their relatives.

57. In Armenia, as a result of a framework agreement concluded between ICRC and the Commission on Prisoners of War, Hostages and Missing Persons, ante-mortem data has been collected from families of the missing since 2008. In Azerbaijan, ante mortem data from the families of missing persons is also being collected and transmitted to the State Commission on Prisoners of War, Hostages and Missing Persons. In 2014, in cooperation with both State Commissions, a

[9] Including in Afghanistan, Argentina, Armenia, Azerbaijan, Bangladesh, Bolivia, Brazil, Burundi, the Central African Republic, Chile, Colombia, the Congo, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Djibouti, El Salvador, Georgia, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Kosovo,* Jordan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malta, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru, the Philippines, Spain, Sri Lanka, the Sudan, South Sudan, East Timor, Uganda, the United Kingdom, the United States, Uruguay, Venezuela and Yemen. (*Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.)

process of collection of biological reference samples from the families of missing person has also been initiated, for the purpose of data conservation.

58. In Kyrgyzstan, ICRC supported the Republic Forensic Bureau by providing repair to selected morgues. In parallel, representatives of law enforcement agencies benefited from an ICRC course on management of human remains.

59. In the Russian Federation, the authorities in the Northern Caucasus have undertaken efforts to profile biological reference samples collected from families of missing persons that could enable the identification of human remains.

60. In Iraq, a Mass Graves Department was established in the Ministry of Human Rights, as well as in the Medico-Legal Institute in Baghdad, benefiting from Government-built DNA laboratories.

VIII. Legal status of missing persons and support for families of persons unaccounted for

61. The suffering that families of missing persons endure is often exacerbated by other challenges and difficulties. In resolution 67/177, States were called upon to take appropriate steps with regard to the legal situation of missing persons and the needs and accompaniment of their family members, in such fields as social welfare, psychological and psychosocial support, financial matters, family law and property rights.

A. Understanding the needs of families

62. In cooperation with family associations, national societies of the Red Cross and Red Crescent Movement, non-governmental organizations, and academic and research institutions, ICRC continued to assess the needs of families of missing persons, based on the ICRC guidelines for multidisciplinary family needs assessments. In 2012 and 2013, such assessments were concluded in Lebanon, Senegal and Uganda. In 2014, assessments have continued in Colombia, El Salvador, Guatemala, Honduras, Iraq, Libya, Mexico, Peru and Tajikistan. In some of these locations, the assessment, inter alia, pertains to the needs of families of missing migrants. The aim of the assessments is to ensure a contextualized and comprehensive understanding of the multifaceted needs of families and determine the existing capacity to respond as well as the level of additional assistance needed. When circumstances allow, ICRC publishes a report on those assessments, for example, in Guatemala, Lebanon, Nepal, Senegal and Timor-Leste. ICRC also engages in confidential dialogues with the concerned authorities regarding the identified needs and appropriate recommendations.

B. Addressing the needs of families

63. Families of the missing have many needs, including the need to know what happened; the need for recognition and commemoration; the need for economic, financial, psychological and psychosocial support; the need for protection against security threats; and the need for access to justice. Furthermore, as a result of gaps in legislation and administrative obstacles, families often lack access to social

benefits and pensions and are prevented from exercising their rights under property and family law. The range of needs and multidimensional impact of a missing family member requires a holistic response.

64. Domestic law should first clarify the legal situation of missing persons, including through provisions for the person to be declared absent or missing so that the families of missing persons become eligible to social and financial benefits, without forcing them to declare the missing relative dead. For example, in addition to the countries mentioned in the previous report by the Secretary-General (see A/67/267, para. 70), Law no. 24.321 on the enforced disappearance of persons, adopted in Argentina, includes the declaration of absence for people who involuntarily disappeared prior to 10 December 1983. In Armenia, Kazakhstan and Kyrgyzstan, the Civil Code regulates the recognition of a citizen as missing. In France, Mexico, Peru, Spain, Switzerland and Uruguay, the Civil Code regulates the declaration of absence. In 2012, Colombia also adopted a law to create declarations of absence for victims of enforced disappearance or other forms of involuntary disappearance. In its submission, Algeria stated that its 2006 law on the implementation of the Charter for Peace and National Reconciliation foresees the possibility, under certain conditions, of obtaining a court decision to declare a missing person as deceased, which opens the door for compensation and other forms of assistance for the family.

65. States such as Armenia, Azerbaijan, Kyrgyzstan, Nepal and Serbia have considered, either by amending existing domestic legislation or through specific provisional decrees, granting victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health-care and tuition fees, child allowances, food assistance, loans, and interim relief. In Azerbaijan, the policy of insurance payments was extended to families of servicemen who went missing before 1997 and who were not eligible for such payments beforehand, following a 28 January 2014 decision of the Constitutional Court. On 18 March 2014, by decree of the President of Azerbaijan, the children whose parents went missing as a result of military operations, and who were considered deceased by a decision of the Court, were exempt from any costs related to their vocational, undergraduate and graduate education; all related costs would be paid for by the State.

66. In its submission, Croatia reported that it had adopted specific regulations to solve status issues of families of missing persons. The Law on the Rights of Croatian Homeland War Veterans and Their Family Members regulates the rights of families of missing Croatian veterans, while the Law on the Protection of the Military and Civilian War-Disabled regulates the rights of families of missing civilians. A system of psychosocial assistance to families of missing persons was also organized, and projects conducted by organizations of family members of missing persons enjoy State support.

67. In 2013, ICRC published "Accompanying the families of missing persons: A practical handbook",[10] in which it set out its approach to address the needs of families of the missing. The handbook brings together the experience and knowledge gained in different processes over the years, for example, in Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Nepal and Timor-Leste. The

[10] Available from www.icrc.org/eng/resources/documents/publication/p4110.htm.

"accompaniment" approach operates on the premise that families can be helped through empathetic relationships, mutual support and linkages between families and the various persons and organizations that provide the necessary support within the community. Its main goal is to strengthen the abilities of individuals and families to deal with difficulties related to the disappearance of their relatives and to gradually help them reacquire a healthy social life and emotional well-being. Since 2013, an accompaniment programme is being implemented in Uganda, and is being explored in El Salvador, Guatemala, Honduras, Lebanon and Mexico.

IX. Conclusions and recommendations

68. **In its resolution 67/177, the General Assembly focuses primarily on the issue of missing persons in connection with armed conflict. However, persons can go missing in other contexts, including in situations of violence, insecurity, organized crime, disaster or migration. The approaches to deal with the issue of persons who are unaccounted for in these different situations can be similar in many ways. I encourage States to consider such similarities in the design of their responses.**

69. **The International Convention for the Protection of All Persons from Enforced Disappearance is a significant contribution to the applicable legal framework. I continue to strongly encourage all States that have not yet become parties to this instrument to take the necessary measures to do so, to incorporate its provisions into domestic law and to ensure full implementation of those provisions by relevant authorities.**

70. **It is essential that States put in place the appropriate legislative and institutional framework and take all possible measures to prevent persons from going missing and respond effectively to missing persons' cases. States' legal framework should address the legal and practical difficulties that the missing person and their family members experience. States must provide proper means of identification for members of their armed forces; they must also ensure that a means of personal identification is provided for children, in the light of their particular vulnerability. States are encouraged to put in place mechanisms that are capable of collecting, protecting and managing data on missing persons. The establishment of national information bureaux and graves registration services, as provided under international humanitarian law, is recommended.**

71. **In the aftermath of armed conflict, States should actively engage in a process to address cases of missing persons and minimize their impact, including by establishing adequate processes to locate, identify and repatriate the missing to their families. Where appropriate, the issue of missing persons should be considered in the context of peacebuilding and transitional justice processes, also ensuring transparency and public involvement and participation. The issue of children missing in connection with armed conflict still requires greater attention.**

72. **As part of their policies to prevent and resolve missing persons cases, States are encouraged to continue to develop local forensic capacity, in line with applicable forensic best practices and international standards and recommendations. Forensic work may constitute an invaluable element of all investigations into missing persons' cases, including through the identification**

of human remains. Building well-trained, well-resourced and independent forensic capacities is essential for ensuring credible investigations into cases of missing persons. Regional coordination and cooperation among forensic institutions and practitioners should be promoted and supported.

73. **States are encouraged to continue ensuring the preservation of and access to archives concerning human rights violations and violations of international humanitarian law, including by developing policies aimed at the maximization of such access but consistent with considerations of privacy and personal safety.**

74. **Families of persons who are unaccounted for suffer and have many needs. The needs of missing persons and their families should be at the centre of any undertaking by States and other relevant actors, with particular attention to those who are most vulnerable, including women, children and migrants. States are encouraged to take steps to understand the needs of the families of the missing, including through family needs assessments, with the aim to identify concrete difficulties experienced and determine the most appropriate response. National committees for the implementation of international humanitarian law could explore developing domestic legal frameworks to address specific legal and administrative difficulties and needs of the families of missing persons.**

75. **Ensuring accountability for gross human rights violations and serious violations of international humanitarian law is critical, both as a preventative measure and a measure of redress. Cases of missing persons in connection with armed conflict should be investigated effectively, promptly, thoroughly, independently and impartially; prosecutions should be brought where such cases involve criminal offences and are supported by evidence. Truth-seeking mechanisms, commissions of inquiry or fact-finding missions, relevant human rights treaty bodies, and special procedure mandate holders can also contribute to accountability, including through their documentation and examination of cases of missing persons that fall within their respective mandates and through their recommendations to national authorities. I encourage these mechanisms to systematically consider the issue of missing persons in the implementation of their mandates.**